



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

DECISION

MAP/169594

PRELIMINARY RECITALS

Pursuant to a petition filed September 10, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Disability Determination Bureau in regard to Medical Assistance, a hearing was held on November 20, 2015, at Barron, Wisconsin.

The issue for determination is whether petitioner is disabled.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: No Appearance

Disability Determination Bureau
722 Williamson St.
Madison, WI 53703

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner is a resident of Barron County.
2. The petitioner applied for MA on April 3, 2015. By letter dated August 14, 2015, the Bureau found that petitioner was not disabled. Petitioner sought reconsideration, but the Bureau affirmed its determination on October 21, 2015.

3. Prior to or concurrently with the MA application, petitioner also applied for Social Security disability benefits and Supplemental Security Income (SSI). Those benefits were denied on July 10, 2015, with findings of no disability.
4. The petitioner does not allege any new medical impairment, nor any worsening of the impairments considered in the Social Security decision.
5. The petitioner works Fridays from 9:00 a.m. until 3:00 p.m. and every other weekend from 8:00 a.m. until 3:00 p.m. She earns \$7.50 per hour.

DISCUSSION

The petitioner applied for medical assistance under the Medicaid Purchase Plan, which allows a working person to receive medical assistance. The petitioner works, but as discussed below her employment is not considered substantial gainful employment, so it will be reviewed in the same way as it would be for any other person seeking medical assistance as a disabled person.

To be considered engaged in substantial gainful employment, a person generally must make at least the following income:

- (ii) *Beginning January 1, 2001*, and each year thereafter, they average more than the larger of:
 - (A) The amount for the previous year, or
 - (B) An amount adjusted for national wage growth, calculated by multiplying \$700 by the ratio of the national average wage index for the year 2 calendar years before the year for which the amount is being calculated to the national average wage index for the year 1998.

20 CFR §416.974 (b)(2).

Using this formula and rounding to the nearest \$10, the Social Security Administration set the 2015 wage limit at \$1,090 per month. <http://www.socialsecurity.gov/oact/cola/sga.html>. The petitioner works Fridays from 9:00 a.m. until 3:00 p.m. and every other weekend from 8:00 a.m. until 3:00 p.m. She earns \$7.50 per hour. Depending upon whether there are four or five weekends in a month, this means she works between 52 and 66 hours per month. Multiplying her \$7.50 hourly wage by 66 hours gives \$495, which is less than half of the amount that is considered substantial gainful employment.

A person between ages 18 and 65, with no minor children, must be blind or disabled to be eligible for MA. A finding of disability must be in accordance with federal social security/SSI standards. See Wis. Stat. § 49.47(4)(a)4. Because the standards are the same, a finding of no disability for Social Security/SSI purposes made within 12 months of the MA application is binding on a State Medicaid (MA) agency. Exceptions may occur only if certain conditions exist such as allegations of a different disabling condition or changes in the previously considered conditions. None of the exceptions apply here. See 42 C.F.R. § 435.541(a); see also U.S. Department of Health and Human Services commentary, 54 Fed. Reg. 236 (1989).

Because the petitioner has been denied Social Security/SSI following a finding of no disability, I must conclude she is not eligible for MA.

CONCLUSIONS OF LAW

The petitioner is not disabled as that term is used for MA purposes pursuant to Wis. Stat. § 49.47(4).

THEREFORE, it is

ORDERED

That the petition for review is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 1st day of December, 2015

\sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on December 1, 2015.

Barron County Department of Human Services
Division of Health Care Access and Accountability